IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1380 of 2006
with
CIVIL APPLICATION NO. 2213 OF 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AJENDRAPRASADJI NARENDRAPRASAD-JI PANDE & 1 - Petitioner(s)
Versus
SWAMI KESHAVPRAKASHDASJI GURUPUJYA NARAYNPRIYADASJI & 2 - Respondent(s)

==========

Appearance :
MR SB VAKIL, Senior Advocate for MR HEMANG H PARIKH for Petitioner(s) : Nos.1 - 2.
MR SN SHELAT, Senior Advocate with MR PRASHANT G DESAI with MR MRUGEN PUROHIT, Advocate for Respondent No.1
MR HARIN P RAVAL, Advocate for Respondent: No. 2

==========

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 09/03/2006

COMMON ORAL JUDGMENT

1. Rule. The learned Advocates appearing on behalf of the respective respondents waive service.

2. Considering the controversy between the parties, the matter has been taken up for final hearing and disposal.

3. On 13th May 2005, the Apex Court expressed its concern in the following terms:

> "When litigants come before courts raising disputes as to who shall function as Head of a religious or

> financial institutions, and they travel through the corridors of various courts and come before this Court, one wonders when do these persons get time to think of purity sublime essences of religion and their duties as religious leaders. It has a sad reflection on the credibility of the religious institutions. Materialistic pursuits increasingly replace divine pursuits. The Present case at hand is no exception."

4. Nearly a year thereafter, unfortunately, the same position obtains and the direction to the Trial Court to dispose of the matter expeditiously preferably by the end of November, 2005 made by the Apex Court remains as a direction without there being effective compliance despite the assurance of the learned Counsel to the Supreme Court that the parties

shall cooperate for early disposal of the suit. The reason is not far to seek as the facts of the present controversy would show.

5. The petitioners herein are the original defendants in Special Civil Suit No.156 of 2002 while the respondents herein are the original plaintiffs. Hereinafter, the parties shall be referred to as per their respective description in the suit, for the sake of convenience.

6. It is an accepted fact that on 27.9.2002, the defendants filed their written statement in the suit. On 1.10.2002, the trial Court made an order below application Exh.5, which came to be challenged by way of Appeal From Order bearing No. 421 of 2002. This Court decided the same vide judgment and order dated 6.4.2004 [(2004) 3 GLR 2081]. The same was carried by way of Appeal before the Apex Court. The Apex Court quashed and set aside the judgment and order made by this

Court directing the High Court to hear the Appeal From Order once again in light of the observations made by the Supreme Court. Accordingly, the Appeal From Order No.421 of 2002 along with connected matter being Appeal From Order No.69 of 2003 came to be heard and disposed of by this Court on 5.10.2005. Once again, the same came to be challenged before the Apex Court and vide order dated 6.1.2006, the Special Leave Petitions were dismissed with a request to the trial Court to dispose of the suit as expeditiously as is conveniently possible preferably with day-to-day hearing.

7. In the meantime, in absence of any stay as to the proceedings, the trial Court framed the Issues on 28th Sept.2005 (Exh.58). On 21st Oct.2005, two applications, viz.Exhs.59 and 64, moved by the parties seeking amendment of the Issues framed and framing of additional Issues, came to be disposed of by the trial Court by

rejecting both the applications. Accordingly, the trial Court posted the matter for evidence on 24.10.2005.

8. On 24.11.2005, the defendants moved an application Exh.95 seeking leave to amend the written statement with a prayer to incorporate in the written statement already filed various defences urged before this Court and the Apex Court in proceedings challenging the order of interim injunction. The said application Exh.95 came to be rejected by the trial Court vide impugned order dated 24th Jan.2006, which has been challenged by way of this petition.

9. Mr.S.B.Vakil, learned Senior Advocate appearing on behalf of the defendants assailed the impugned order made by the trial Court. It was submitted, firstly, that the trial Court had erred in reading the provisions of Order VI Rule 17 of the Code of Civil Procedure, 1908 ('CPC')

with special reference to proviso under the said Rule. The submission was that, if the approach of the trial Court could be held to be correct, it would render the main provision of the Rule ineffective, and considering the phraseology with special reference to “real questions”, “any stage of the proceedings”, the entire Rule was rendered otiose if no amendment to the pleadings was permitted by the construction of the proviso made by the trial Court. That the position in law was that appeal being continuation of the suit, amendment was also permissible in the pleadings at the appellate stage. Secondly, that though the proviso used the term “shall”, the said term had to be read as denoting “may”, as otherwise, it would take away the discretion granted to the trial Court by the main provision. That the Court must consider substantial compliance of the provisions and should not adopt strict or rigid approach. Thirdly, it was submitted that the concept of commencement of

trial had to be in relation to the stage when recording of evidence really commenced, and mere filing of affidavit could not be termed to be recording of evidence and hence not amounting to commencement of trial. That the act of filing of affidavit was only an act of the parties and was not recording of the evidence by the Court. Referring to the provisions of Order XVIII and the Rules thereunder of the CPC, it was submitted that the Rules provided for a right to raise objections before the Court as well as before the Commissioner and if the interpretation placed by the trial Court was correct, it would take away such right to object. In this context, a further contention was that the provisions of the Evidence Act would operate and there could be no recording of evidence merely on the basis of filing of affidavits. Lastly, it was submitted that various grounds on which the written statement was sought to be amended were not new and had been agitated before this Court as well

as the Apex Court, that the Courts had made note of those submissions and, therefore, there could be no concept of delay which could come in way of the defendants being permitted to amend the written statement. In support of the aforesaid submissions, it was stated that Rules of procedure have to be always read as directory in nature, harmoniously construed, and are required to be made effective so as to advance cause of justice, if necessary, by exercise of inherent powers available to the Court to do complete justice between the parties. Reliance was placed on Apex Court decisions in Salem Advocate Bar Association, Tamil Nadu v. Union of India [AIR 2005 SC 3353], in Sampath Kumar v. Ayyakannu and anr. [AIR 2002 SC 3369], and in Kailash v. Nanhku and ors., [(2005) 4 SCC 480].

10. Mr.S.N.Shelat, learned Senior Advocate, appearing on behalf plaintiff No.1 submitted that the case law and the interpretation put on Order

VI Rule 17 of CPC before the point of time when the amendment by way of insertion of proviso came into force with effect from 1st July 2002 would have no bearing in determining the issue which arises after the amendment. Responding to the submission that amendment was permissible at the appellate stage, it was submitted that the same was by now barred by express provision in the form of proviso, and while determining the controversy brought before the Court, the object with which the proviso was introduced had to be borne in mind when the Court was called upon to ascertain the true import of the proviso. He placed reliance on the Apex Court decisions in Kush Saigal and ors. v. M.C.Mitter and ors. [(2000) 4 SCC 526] and Laxminarayan R.Bhattad and ors. v. State of Maharashtra and anr. [AIR 2003 SC 3502] to point out the true nature and scope of the proviso as laid down by judicial pronouncements. Inviting attention to the aforesaid decision in the case of Salem Advocate

Bar Association (supra), it was submitted that filing of written statement, though circumscribed by a statutory period of limitation, was permitted to be undertaken after the period had expired by adopting a liberal and constructive approach, but once the written statement had been filed, when the question of amending the same came up before the Court, the Court had to go strictly in accordance with the provisions and no leeway was permissible for exercise of inherent powers in such circumstances. He also invited attention to various provisions of CPC to point out as to when can the trial be stated to have commenced. Lastly, referring to the provisions of Sub-Rule (2) of Rule 4 of Order XVIII of CPC, it was submitted that the same was clear and there could be no doubt as to the point of time when the trial could be stated to be commenced. That once Legislature had provided that examination-in-chief had to be made by way of filing of affidavit, nothing more was required for coming

to the conclusion that the stage for recording of the evidence had been reached. He placed reliance on the decision of Orissa High Court in Smt. Basanti Satapathy and ors. v. Rakesh Kumar Satapathy [2003 AIHC 1947]. He, therefore, urged that no interference is called for in the order made by the trial Court.

11. Mr.P.M.Thakkar, learned Senior Advocate appearing for plaintiff No.2 while supporting the submissions made by Mr.Shelat, submitted that the exercise of discretion for the purposes of amendment of written statement or filing of additional written statement was permissible only in exceptional circumstances and the language employed by the controversy was clear. Therefore, there was no error committed by the trial Court.

12. The facts narrated hereinbefore go to show that for the present purpose, the controversy between the parties is primarily limited to the

issue as to whether the defendants are entitled to seek amendment of the written statement at the stage of the suit when application Exh.95 came to be filed i.e. on 24.11.2005. Order VI of CPC pertains to PLEADINGS GENERALLY. Rule 17 of the said Order pertains to Amendment of Pleadings. The same may be reproduced for the sake of ready reference:

> **"17. Amendment of pleadings**. -- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:
>
> Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court

comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

13. Before undertaking an analysis of the provision, it is necessary to formulate the test as to the point of time when amendment of pleadings could be permitted considering the language employed by the Legislature. Though the question of delay as such has not directly been raised, it is necessary to consider the same. In the case of Sampath Kumar (supra), when the Apex Court was called upon to decide such issue, it was laid down that the question of delay in moving an application for amendment should not be decided by calculating the period from the date of institution of the suit alone, but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are to be allowed more liberally than those

amendments which are sought to be made after the commencement of the trial. That no strait-jacket formula could be laid down but yet, mere delay by itself cannot be a ground for refusing a prayer for amendment. It is in this context that the insertion of proviso below Rule 17 of Order VI of CPC will have to be appreciated.

14. Rule 17 of Order VI of CPC stipulates that the Court has discretion to permit either party to the suit to alter or amend the pleadings at any stage of the proceedings. That the Court is entitled to permit such alteration or amendment by laying down the manner in which the same shall be carried out and imposing such terms as the Court deems to be just. However, the basic requirement for permitting the alteration or amendment of the pleadings is to determine the real questions in controversy between the parties to the suit. If Rule 17 is read without the proviso, it would cause no difficulty and

possibly, there would be no dispute between the parties. However, after the Amendment Act and the proviso having come on the statute book, with effect from 1st July 2002, it is required to be examined as to whether there is any curtailment in the powers available to the trial Court and if yes, the extent of such curtailment.

15. Proviso to Rule 17 stipulates that no application shall be allowed after the trial has commenced. However, the Legislature has, while carving out an exception qua the discretion available to the trial Court in the Rule, provided a caveat, namely, unless the Court comes to the conclusion that inspite of due diligence the party could not have raised the matter before commencement of the trial. Thus, the discretion vested in the trial Court by virtue of provisions of Rule 17 is now subject to the rider in the form of proviso and in a case where the trial has commenced, the discretion vested in the trial

Court to permit amendment of pleadings, has been circumscribed. The Court is required to then ascertain, namely, after the stage when trial has commenced, as to whether the party seeking the amendment could have with exercise of due diligence been in a position to pray for amendment before the trial had commenced.

16. What is the concept of 'due diligence' is not unknown. The Legislature had used the phrase 'due diligence' in context of production of additional evidence by virtue of Order XVIII Rule 17-A, as was in existence before the amendment of CPC. The requirement is that the party applying to the Court should satisfy the Court that such evidence was not within the knowledge of the party or could not be produced at the time the party was leading the evidence despite due diligence. The same principles are applicable and have been incorporated by the Legislature in Rule 1 of Order XLVII of CPC which pertains to

review of a judgment or order. There also, the exercise of due diligence has been incorporated as a basic requirement for permitting a party to seek review on the basis of discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge or could not be produced at the time when the order was made. Therefore, the underlying principle running all throughout is existence of or absence of knowledge. The same principle would be a guiding factor for the purposes of determination as to whether after the insertion of the proviso below Rule 17 of Order VI of CPC, the Court can exercise discretion of permitting amendment in the pleadings and the guiding test has to be whether the amendment or alteration sought in the pleadings could have been within the knowledge of the party making the application at a stage prior to the commencement of the trial, and availability of such knowledge was based on exercise of due diligence.

17. Though under Rule 17 Order VI of CPC, no further requirement is specified, once the concept of due diligence comes into play, the Court is required to put a party applying for such amendment to strict proof as required by Sub-rule (2) of Rule 4 of Order XLVII of CPC wherein the Legislature has provided that an application for review cannot be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by the applicant when the order was made, without strict proof of such allegation. Therefore, the test would be when did the cause of action arise, namely, when did the applicant derive the knowledge, which knowledge he did not have despite exercise of due diligence; and for establishing this, the applicant is bound to tender strict proof in support of the submission that he did not have knowledge after exercise of

due diligence regarding aspects or points to be urged and incorporated in the pleadings by way of amendment.

18. As to when can one say, with certainty, that trial has commenced is not an issue which requires to be dealt with at length. Order XVIII Rule 4 deals with recording of evidence. Order XVIII of CPC specifically pertains to hearing of the suit and examination of witnesses. Under Rule 4 of Order XVIII, Sub-rule (1) provides that examination-in-chief of a witness shall be on affidavit. Under Sub-rule (2) of Rule 4 of Order XVIII of CPC, a provision is made that the evidence (cross examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court, shall be taken either by the Court or by the Commissioner appointed by the Court. The provision is clear and unambiguous. The moment witness files affidavit, it

tantamounts to examination-in-chief; this is of course, subject to the powers available to the Court to record oral evidence, even in such a case, where the Court finds it necessary. But from an enabling power, it cannot be contended, and if contended, cannot be accepted that till oral evidence is recorded, it could not be stated that the stage of recording of evidence has been arrived at, once the Legislature has prescribed that examination-in-chief is permissible by way of filing of affidavit. The Apex Court has laid down in no uncertain terms the efficacy of such affidavits filed as is clear from the enunciation made in paragraph No.5 (p.3357) of the decision in the case of Salem Advocate Bar Association (supra). Therefore, to contend that till the point of time, a witness steps into the box and the Court records oral evidence, trial cannot be stated to have commenced, does not merit acceptance. In the case of Kailash (supra), the Supreme Court while stating the law regarding

'Trial of Election Petition' has held that in a civil suit, the trial begins when issues are framed and the case is set down for recording of evidence. All the proceedings before that stage are treated as proceedings preliminary to trial or for making the case ready for trial.

19. In the case of Salem Advocate Bar Association (supra), the Apex Court was called upon to explain the provisions of Order VIII Rule 1 after the amendment wherein a time limit is fixed for filing of written statement. In this context, it has been observed that though the provision uses the term “shall”, that by itself would not be conclusive to determine that the provision is mandatory. The object which is sought to be achieved by the provision has to be borne in mind and contextual interpretation has to be placed on the language in which the provision is couched. A further requirement for the purpose of interpreting the Rule is advancement of the cause

of justice and not to defeat it. The construction of the Rule of procedure has to be in this context. The Apex Court has laid down that by applying the doctrine of harmonious construction, Rule 1 of Order VIII of CPC after the amendment has to be interpreted so as to mean that in normal circumstances, as a matter of routine, written statement has to be filed within prescribed time limit, but in exceptional circumstances, i.e. Exceptionally hard cases, the Court can extend time for submission of written statement. From the aforesaid pronouncement, no support can be derived by the defendants – petitioners herein for the purpose of interpreting the term “shall” in the proviso to Rule 17 of Order VI of CPC.

20. To the contrary, once the written statement is filed, the amendment to the same requires a strict construction of the provision of Rule 17 inclusive of the proviso considering the object

of the amendment. The Court has to pose to itself a question as to whether the amendment is one which the party could have after exercise of due diligence, brought before the Court at a stage or point of time prior to the stage at which the suit has reached, i.e. trial has commenced. The amendment by way of proviso is to put a curb on the dilatory tactics adopted by the litigants and this becomes clear from the enunciation made in paragraph No. 27 of the judgment in the case of Salem Advocates Bar Association (supra). The Apex Court has stated, “the object is to prevent frivolous applications which are filed to delay the trial”.

21. Even if for the sake of argument, the contention advanced on behalf of the defendants that the proviso has to be read as being directory in nature, is accepted, as laid down by the Apex Court, the powers available for doing so are to be exercised by the trial Court only in

exceptionally hard cases and not in a routine manner. Therefore, even if it is treated to be directory in nature, the party making an application is required to establish that it is an exceptionally hard case which warrants exercise of such discretion.

22. However, when one examines the facts of the case, and applies the aforesaid principles, it becomes apparent that the conduct of the defendants goes to show that the exercise, namely, filing of application Exh.95, is directly in conflict with the object of the amendment, i.e. to adopt a dilatory tactic. It is admitted by the learned Senior Advocate appearing on behalf of the defendants that all the issues raised by way of proposed amendment in the written statement were taken before this Court in the Appeal From Order filed by the present defendants, in the Civil Appeal filed before the Apex Court, in the Appeal From Order in the

second round before this Court and again, in a Special Leave Petition filed before the Apex Court, in the second round. Hence, the defendants cannot plead absence of knowledge after exercise of due diligence. If this be the position, the approach adopted by the trial Court cannot be stated to suffer from any infirmity so as to call for intervention at the hands of this Court in a petition under Article 227 of the Constitution of India.

23. The meaning of the word 'diligence' is careful and persistent application or effort, as opposed to the meaning of the word 'negligence', which means a lack of proper care and attention; carelessness. Therefore, when one talks of due diligence, the conduct has to show that a careful and persistent effort was made as opposed to a lack of proper care and attention in putting up one's defence or case, as the case may be. On this count also, the defendants have not been

able to show that there was an effort which was careful and persistent. To the contrary, having raised the same issues in other proceedings, it denotes a lack of proper care and attention necessary for establishing one's defence before the trial Court.

24. In the case of Shree Nathji Bhandar – Porbandar v. Pradeep Sureshchandra Bhatt in Special Civil Application No. 4041 of 2006, vide order dated 6.3.2006, this Court has observed as follows:

24.1 “In the case of Mohd. Yunus v. Mohd. Mustaqim and others, AIR 1984 SC 38, the following pronouncement is made by the Apex Court in relation to the jurisdiction available to the High Court under Article 227 of the Constitution of India:

6. xxx xxx xxx A mere wrong

decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227.

7. xxx xxx xxx The super-visory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited 'to seeing that an inferior Court or Tribunal functions within the limits of its authority' and not to correct an error apparent on the face of the record, much less, an error of law. xxx xxx xxx In exercising the supervisory power under Article 227, the High Court does not act as an appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior Court or Tribunal purports to be based or to correct errors of

law in the decision."

24.2 This position has since been reiterated by the Apex Court in the case of Sadhna Lodh v. National Insurance Co.Ltd. and anr. 2003 (3) SCC 524.

24.3 After the amendment in the Code of Civil Procedure, in the case of Surya Dev Rai v. Ram Chander Rai and others, AIR 2003 SC 3044, the Apex Court was once again called upon to define the parameters of jurisdiction available to the High Court under Article 227 of the Constitution. In paragraph No.38 of the said decision, the Supreme Court has summarised the conclusions and it is stated that though interlocutory orders, passed by the Courts subordinate to the High Court against which remedy of revision has been excluded by the CPC Amendment Act, are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory

jurisdiction of the High Court, the principles applicable for exercise of such jurisdiction have been set out. It is further stated that:

> "38. xxx xxx xxx (5) "Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.
>
> (6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or

complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent."

24.4 The Apex Court goes on to state "that the powers to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion, and care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court."

25. In the case of T.S.Balaram, Income Tax Officer v. Volkart Brothers and ors, (1971) 82

ITR 50, the Apex Court was called upon to enunciate as to what could be termed as “a mistake apparent on the record”. It is laid down that it was not open to the authority to go into the true scope of the relevant provisions of the Act in a proceeding for rectification. That a mistake apparent on the record must be obvious and patent mistake and not something which could be established by a long drawn process of reasoning on points on which there may be conceivably two opinions. Thereafter, after referring to the decision in the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Thirumale, [(1950) 1 SCR 890], the Apex Court stated that, “..... this court while spelling out the scope of the power of a High Court under article 226 of the Constitution ruled that an error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions cannot be said to be an error apparent

on the face of the record. A decision on a debatable point of law is not a mistake apparent from the record." Applying the aforesaid tests to the facts of the case, it is apparent that the true scope of Rule 17 of Order VI of CPC cannot be a subject matter of petition under Article 227 of the Constitution, and in a case where the subordinate Court has arrived at a view, which is a possible view of the matter, even if this Court can arrive at a different view of the matter on interpretation of the Rule in question, that by itself is not sufficient to invest this Court with powers to be exercised under Article 227 of the Constitution. Therefore, on this count also, it is not possible to find any infirmity in the order made by the trial Court so as to call for intervention by this Court.

26. It has been found by the trial Court on facts that the issues came to be framed on 28.9.2005

and after the disposal of the applications Exhs.59 and 64 on 21.10.2005, the suit had been posted for evidence on 24.10.2005. That therefore, according to the trial Court, it could be stated that the trial had commenced. The trial Court has further found from the facts and evidence on record that the defendants have failed to show and establish, in context of proviso to Rule 17 of Order VI of CPC, that despite exercise of due diligence, the defendants were not in a position to raise the issues raised by way of proposed amendment to the written statement before commencement of trial. The trial Court has also negatived the contention raised on behalf of the defendants that filing of affidavit (Mark-75) on behalf of the plaintiffs could not be termed to be recording of evidence. That till the cross-examination of the witness whose affidavit (Mark-75) has come on record, has commenced, there would be no recording of evidence, is an incorrect proposition in light of

the pronouncement made by the Apex Court in Salem Advocates Bar Association (supra). The trial Court has further found that the application Exh.95 has been verified only by defendant No.2 and therefore, the averments made in the application cannot be stated to have been made by defendant No.1 as the amendment application does not bear the signature of defendant No.1, nor is the same supported by an affidavit of defendant No.1. The trial Court has also taken note of the fact that the same issues were raised by the defendants in the Appeal From Order No.421 of 2002 filed before the High Court and hence, there was no exercise of due diligence by the defendants entitling them to exercise of discretion by the trial Court in favour of the defendants. Lastly, it has been found by the trial Court that there is no valid, reasonable or sufficient ground shown by the defendants for tendering application Exh.95 at such a belated stage.

27. In light of the aforesaid findings which are based on the record of the case, it is not possible to state that the trial Court has committed any error of jurisdiction so as to entitle the High Court to exercise jurisdiction under Article 227 of the Constitution of India. In the result, the petition is rejected. Rule is discharged. Interim relief stands vacated. There shall be no order as to costs.

28. At this stage, learned Advocate for the petitioners – defendants makes a prayer to extend the stay of operation of the impugned order. For the reasons stated hereinbefore, the request is rejected.

CIVIL APPLICATION NO. 2213 OF 2006

29. In light of the judgment and order made today in the main matter, i.e. Special Civil

Application No. 1380 of 2006, this Civil Application has become infructuous and is rejected as such.

(**D.A.Mehta, J**.)

Sreeram.